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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/576,686	05/23/2000	Paul B. Darcy	MFCP.70154	3725
5251	7590	04/20/2004	EXAMINER	
SHOOK, HARDY & BACON LLP 2555 GRAND BLVD KANSAS CITY,, MO 64108			WOO, RICHARD SUKYOON	
			ART UNIT	PAPER NUMBER
			3629	

DATE MAILED: 04/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/576,686

Applicant(s)

DARCY ET AL.

Examiner

Richard Woo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 January 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3-20,30 and 32-44 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3-20, 30, 32-44 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Response to Arguments***

- 1) The Applicants' response, filed January 8, 2004, including the amendment and cancellation of claims, and the presentation of new claims is acknowledged.
- 2) Applicant's arguments with respect to claims 1 and 30 have been considered but are moot in view of the new ground(s) of rejection. The new ground of rejection is necessitated by the newly added limitation, "wherein determining the providing cost comprises, identifying each resource utilized to provide the one or more services, and assigning a portion of the providing cost of each resource to the computer transaction, and summing the providing cost for each resource to determining a providing cost for the computer transaction" to the original claim
- 3) Applicant's arguments with respect to Claim 36 have been fully considered but they are not persuasive.

In response to applicant's argument that Saari fails to disclose a method for measuring the quality associated with the execution of a computer transaction, Saari includes the quality of service (which is associated with the execution of the computer transaction) as the factor to compute the cost of network usage (see Col. 4, lines 19-42).

Saari includes the step of identifying one or more services utilized to execute the transaction (e.g. See Fig. 6, step 142 (real-time connection or non-real-time connection), and monitoring a service record.

***Claim Rejections - 35 USC § 112***

4) Claim 44 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In Claim 44, lines 7-9, the recitations of “the provider” and “the provider cost” lack antecedent basis.

***Claim Rejections - 35 USC § 102***

5) Claims 36-42 are rejected under 35 U.S.C. 102(e) as being anticipated by Saari et al. (US 6,338,046).

**W.R.T. Claim 36:**

Saari et al. discloses a method comprising:

associating an identifier (billing cell, 31) with the transaction (see cols. 1 and 2; and Figs. 1-13 and the description thereof; col. 4, lines 18-42);

identifying services (e.g. real-time or non-real-time connection, or audio or video services see Cols. 1 and 4 *Supra*);

monitoring a service record to associate an availability of the services (see *Supra*); and

monitoring the service record to associate a response time of the services (connection time and amount of data transferred over the connection).

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W.R.T. Claim 37: Saari et al. further discloses the method, wherein the identifier (31) is an open-handle identifier;

W.R.T. Claim 38: Saari et al. further discloses the method, wherein the monitoring steps includes monitoring a network service record (the network billing system must monitor the network service record to compute the connection and service cost);

W.R.T. Claim 39: Saari et al. further discloses the method, wherein the network is the Internet;

W.R.T. Claim 40: Saari et al. further discloses the method including the step of associating an individual user with the computer transaction (see Supra Col. 4 and the billing scheme to associate the user with the corresponding transaction);

W.R.T. Claim 41: Saari et al. further discloses a computer-readable medium and a computer system performing the method claim as recited above (see cols. 1 and 2; and Figs. 1-13 and the description thereof; col. 4, lines 18-42); and

W.R.T. Claim 42: Saari et al. further discloses a system operable to perform the steps recited above (see Id.).

6) Claim 44, as far as it is definite, is rejected under 35 U.S.C. 102(e) as being anticipated by Al-Hilali et al. (US 6,086,618).

Al-Hilali et al. discloses a system comprising:

a service identification component (see Figs. 2-4, step 102);

a resource identification component (see step 104 and see Supra);

a cost assessment component for determining a cost to the provider for each resource and determining a cost for the transaction (see step 106).

***Claim Rejections - 35 USC § 103***

7) Claims 1, 3-20, 30, 32-35 and 43 rejected under 35 U.S.C. 103(a) as being unpatentable over Saari et al. in view of Al-Hilali et al..

**W.R.T. Claims 1, 19 and 20:**

Saari et al. discloses a method comprising:

identifying one or more underlying services (audio, video, real-time or non-real-time service) utilized to execute the computer transaction (see generally cols. 1-2, abstract, claims); and

determining a cost associated with the one or more services to execute the transaction as a function of the usage of the services (see Figs. 1-13 and the description thereof).

Saari et al. further discloses a computer medium and system to perform the steps recited above.

However, Saari et al does not expressly disclose the invention further comprising: the determining the providing cost including, identifying each resource utilized to provide the one or more services, and assigning a portion of the providing cost of each resource to the computer transaction, and summing the providing cost for each resource to determine a providing cost for the computer transaction.

Al-Hilali et al. teaches, for a method and system for estimating total resource usage requirements, that the method and system includes the step of determining the

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providing cost including, identifying each resource (system hardware, software, etc) utilized to provide the one or more services, and assigning a portion of the providing cost of each resource to the computer transaction, and summing the providing cost for each resource to determine a providing cost for the computer transaction (see Col. 1, line 18 – col. 3, line 61; col. 3, line 65 – col. 5, line 41).

Since Al-Hilali et al. and Saari et al. are both from the same field of endeavor, the purpose disclosed by Al-Hilali et al. would have been well recognized in the pertinent field of Saari et al..

Accordingly, it would have been obvious at the time the invention was made to a person having ordinary skill in the art to identify each resource utilized to provide the one or more services, assign a portion of the providing cost of each resource to the computer transaction, and sum the providing cost for each resource, as taught by Al-Hilali et al., for the purpose of accurately estimating the total resource usage of a server application.

W.R.T. Claim 3: The modified Saari et al. further discloses the method, wherein equipment is a utilized resource (see Al-Hilali et al. for the hardware) and the providing cost includes a software cost and the determining step includes calculating the software cost as a percentage of an overall software cost (see cols. 1 and 2; and Figs. 1-13 and the description thereof; col. 4, lines 18-42 in Saari et al.; see Supra Al-Hilali et al.);

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W.R.T. Claim 4: The modified Saari et al. further discloses the method, wherein the software is a utilized resource (see *Supra* Al-Hilali et al.) and the providing cost includes an equipment cost and the determining step includes calculating the equipment cost as a percentage of an overall equipment cost (*Id.*);

W.R.T. Claim 5: The modified Saari et al. further discloses the method, wherein personnel is a utilized resource (obviously, both Saari et al. and Al-Hilali et al. require the human resources to facilitate the system and any expense to maintain this personnel must be included in the billing and cost scheme) and the providing cost includes a personnel cost and the determining step includes calculating the personnel cost as a percentage of an overall personnel cost (see *Supra*);

W.R.T. Claim 6: The modified Saari et al. further discloses the method, wherein a facility is a utilized resource (obviously, both Saari et al. and Al-Hilali et al. must require the physical facility to provide the service to the user, and any expense occurred from maintain the facility must be included in the final cost. Nothing is free in the business environment) and the providing cost includes a facility cost and the determining step includes calculating the facility cost as a percentage of an overall facility cost (see cols. 1 and 2; and Figs. 1-13 and the description thereof; col. 4, lines 18-42);

W.R.T. Claim 7: The modified Saari et al. further discloses the method, wherein the determining step includes determining a cost for a level of quality of the one or more services (see *Supra* Saari et al. and Al-Hilali et al.);

W.R.T. Claim 8: The modified Saari et al. further discloses the method, wherein the step of determining a cost for the quality of the services includes determining a cost for the



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availability of the services (see cols. 1 and 2; and Figs. 1-13 and the description thereof; col. 4, lines 18-42; see Supra Al-Hilali et al.);

W.R.T. Claim 9: The modified Saari et al. further discloses the method, wherein the availability cost includes an equipment cost and step of determining a cost for the availability includes calculating the equipment cost as a percentage of an overall equipment cost (*Id.*);

W.R.T. Claim 10: The modified Saari et al. further discloses the method, wherein the availability cost includes a software cost and step of determining a cost for the availability includes calculating the software cost as a percentage of an overall software cost (see cols. 1 and 2; and Figs. 1-13 and the description thereof; col. 4, lines 18-42; Supra Al-Hilali et al. for the hardware and software resource);

W.R.T. Claim 11: The modified Saari et al. further discloses the method, wherein the availability cost includes a personnel cost and step of determining a cost for the availability includes calculating the personnel cost as a percentage of an overall personnel cost (see Supra Claim 5 and Supra Saari et al. and Al-Hilali et al.);

W.R.T. Claim 12: The modified Saari et al. further discloses the method, wherein the availability cost includes a facility cost and step of determining a cost for the availability includes calculating the facility cost as a percentage of an overall facility cost (see Supra Claim 6 and Supra step of determining a cost);

W.R.T. Claim 13: The modified Saari et al. further discloses the method, wherein the step of determining a cost for the quality of services includes determining a cost of the

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response time of the services (see cols. 1 and 2; and Figs. 1-13 and the description thereof; col. 4, lines 18-42);

W.R.T. Claim 14: The modified Saari et al. further discloses the method, wherein the response time cost includes an equipment cost and step of determining a cost for determining a cost for the response time includes calculating the equipment cost as a percentage of an overall equipment cost (*Id.*);

W.R.T. Claim 15: The modified Saari et al. further discloses the method, wherein the response time cost includes a software cost and step of determining a cost for determining a cost for the response time includes calculating the software cost as a percentage of an overall software cost (see *Supra*);

W.R.T. Claim 16: The modified Saari et al. further discloses the method, wherein the response time cost includes a personnel cost and step of determining a cost for determining a cost for the response time includes calculating the personnel cost as a percentage of an overall personnel cost (see cols. 1 and 2; and Figs. 1-13 and the description thereof; col. 4, lines 18-42; *Supra* Al-Hilali et al.);

W.R.T. Claim 17: The modified Saari et al. further discloses the method, wherein the response time cost includes a facility cost and step of determining a cost for determining a cost for the response time includes calculating the facility cost as a percentage of an overall facility cost (*Id.*); and

W.R.T. Claim 18: The modified Saari et al. further discloses the method, wherein the determining step includes determining a cost for providing the services and the determining step includes determining a cost for a level of quality of services, including

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the step of combining the providing cost and the quality cost to define a transaction cost (see cols. 1 and 2; and Figs. 1-13 and the description thereof; col. 4, lines 18-42; *Supra* Al-Hilali et al.).

**W.R.T. Claims 30, 34 and 35:**

Saari et al. discloses a method comprising:

- requesting, by a user process, execution of a transaction (see cols. 1 and 2; and Figs. 1-13 and the description thereof; col. 4, lines 18-42);
- receiving the user process request (*Id.*);
- executing the user process request; and
- determining a cost associated with the execution of the transaction as a function of the services (see *Supra*).

Saari et al. further discloses a computer system and computer-readable medium performing the method claim as recited above.

However, Saari et al does not expressly disclose the invention, wherein the determining the providing cost comprises identifying each resource utilized to provide the one or more services and assigning a portion of the providing cost of each resource to the computer transaction.

Al-Hilali et al. teaches, for a method and system for estimating total resource usage requirements, that the method and system includes the step of determining the providing cost including, identifying each resource (system hardware, software, etc) utilized to provide the one or more services, and assigning a portion of the providing cost of each resource to the computer transaction (see Col. 1, line 18 – col. 3, line 61; col. 3, line 65 – col. 5, line 41).

Since Al-Hilali et al. and Saari et al. are both from the same field of endeavor, the purpose disclosed by Al-Hilali et al. would have been well recognized in the pertinent field of Saari et al..

Accordingly, it would have been obvious at the time the invention was made to a person having ordinary skill in the art to identify each resource utilized to provide the one or more services, and assign a portion of the providing cost of each resource to the computer transaction, as taught by Al-Hilali et al., for the purpose of accurately estimating the total resource usage of a server application.

W.R.T. Claim 32: The modified Saari et al. further discloses the method, wherein the determining step includes determining a quality cost of the services (see Supra Saari et al. and Al-Hilali et al.); and

W.R.T. Claim 33: The modified Saari et al. further discloses the method, wherein the step of determining a providing cost of the services includes determining an availability

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cost and a response time cost (see cols. 1 and 2; and Figs. 1-13 and the description thereof; col. 4, lines 18-42; See Supra Al-Hilali et al.).

W.R.T. Claim 43: The modified Saari et al. further discloses the method, including:

identifying a fixed cost resource and attributing a portion of the total providing cost for the fixed cost resource to the computer transaction (see Col. 7, lines 28-46 in Saari et al.),

identifying a variable cost resources and determining a portion of the variable cost resource required to conduct the transaction (see Col. 9, lines 45-55 in Saari et al.; and Col. 4, line 34 – Col. 5, line 37 in Al-Hilali et al.) ; and

summing the providing cost for the fixed cost resource and the providing cost for the variable cost resource to determine a cost for the computer transaction (see Supra summing and determining cost for the service of Saari et al. and Al-Hilali et al.).

### ***Conclusion***

8) Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the

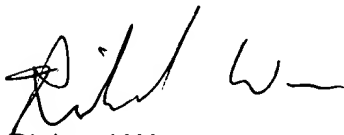
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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

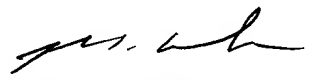
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard Woo whose telephone number is 703-308-7830. The examiner can normally be reached on Monday-Friday from 8:30 AM -5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on 703-308-2702. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9306 for regular communications and After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0861.



Richard Woo  
Patent Examiner  
GAU 3629  
April 16, 2004



JOHN G. WEISS  
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